Doc Code: AP.PRE.REQ

PTO/SB/33 (12-08)
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
23982-10313

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Application Number	Filed
09/993,865	November 14, 2001

First Named Inventor
William M. Cullen

Art Unit	Examiner
2151	Dhairya A. Patel

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☑ attorney or agent of record.
Registration number 33800.

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

/Greg T. Sueoka/
Signature

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April 29, 2009
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☑ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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REMARKS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW IN U.S. PATENT APPLICATION NO. 09/993,865 FILED ON 11/14/2001

Pre-appeal brief review is appropriate in this application because the rejections in the February 3, 2009 Final Office Action contain clear deficiencies. Chandrasekaran, Kalkunte, and Hamada fail to disclose various limitations of independent claims 1, 13, 16 and 24, and thus prima facie obviousness required by MPEP §2143.03 has not been established.

Rejection of claims 1, 3-31 under 35 U.S.C. §103

Claims 1, 3, 7-12, 16-17, 20-25 and 28-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chandrasekaran in view of Hamada, further in view of Kalkunte. Claims 4-6, 13-15, 18-19, and 26-27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Chandrasekaran in view of Hamada, further in view of Kalkunte, further in view of Stein.

Independent claim 1 partly recites:

> if the message has been delivered, removing the message from the non-persistent storage; and after a configurable delay interval has elapsed and if the message has not been removed from the non-persistent storage, saving the message to persistent storage so that the message can be retrieved and delivered.

Independent claims 13, 16, and 24 recite similar limitations.

The panel should overturn the Examiner's 35 U.S.C. § 103(a) rejections because the Examiner fails to make a prima facie case of obviousness.

Chandrasekaran discusses a system for propagating a message from a source site to a destination site. At the source site, the message is dequeued from the propagation queue, assigned a propagation sequence number, and transmitted to destination site (7:17-30). Once the message is sent, the source site stores propagation message metadata, not the message itself,

including propagation sequence number, the UID, and an initial propagation state in the non volatile memory (7:30-32). This is significant because the source site cannot use the stored message metadata alone, unlike stored message, to later transmit the message (not the message metadata) to the destination site. The source site then sends a commit request to the destination site and updates propagation message metadata after receiving a commit reply from the destination site.

At the destination site, the received message is enqueued and the destination site then waits for the commit request from the source site. If the destination site does not get a commit request and the destination site determines that the source site has failed, the destination site dequeues the message from the receive message queue (12:24-12:31).

The Examiner cites Chandrasekaran at 12:24-31 and argues that the destination cite dequeues the message after receiving it and therefore teaches "if the message has been delivered, removing the message from the non-persistent storage" *See, e.g., page 3 of the Final Office Action dated February 3, 2009*. However, Chandrasekaran at 12:24-12:31 discloses removing the message from receive message queue if the source site has failed and not if the message has been delivered. Moreover, the Examiner's argument is based on the logical fallacy that Y follows X discloses if X then Y. Assuming arguendo that destination cite receiving the message discloses delivery of message, dequeuing the message after receiving the message does not disclose removing the message after checking **if** the message has been delivered.

The Examiner also fails to make a prima facie case of obviousness when Examiner argues that Chandrasekaran at 7:31-39, 10:43-67 and 11:1-22 discloses that the message in Chandrasekaran is in volatile memory and the message information data is later stored in non-volatile memory after sending the message to the destination site. According to the Examiner,

this disclosure teaches "if the message has not been removed from the non-persistent storage, saving the message to persistent storage." *See, e.g., page 3 of the Final Office Action dated February 3, 2009*.

However, the message and the message metadata are two different things. Storing the message in volatile memory and storing the message metadata in non-volatile memory does not disclose storing the message itself in volatile memory and then later storing the same message in non-volatile memory. The significance of difference between the message and message metadata has been noted above, namely, the information stored by the claimed invention can be used to resend the message while the metadata stored by Chandrasekaran cannot.

Moreover, the message in claimed invention is moved to non-volatile memory if the message has not been removed from the volatile memory. On the other hand, message information in Chandrasekaran is stored in non-volatile memory as a marker that the dequeued message has been sent to the destination site. Chandrasekaran, 10:65-11:5. Accordingly, the storage of data in non-volatile memory in the claimed invention and Chandrasekaran are in response to two very different conditions and Chandrasekaran therefore does not store message data information into non-volatile memory "if the message has not been removed from the non-persistent storage."

The Examiner next cites Kalkunte at 5:15-5:44 and 6:65-6:67 as disclosing "after a **configurable delay** interval has elapsed and if the message has not been removed from the non-persistent storage, saving the message to persistent storage so that the message can be retrieved and delivered." *See, e.g., pages 4 and 5 of the Final Office Action dated February 3, 2009*. However, the time delay in Kalkunte is randomized and not configurable (abstract, 6:60-7:1). Because the time delay is random, Kalkunte does not disclose a time delay that can be

configured. Kalkunte therefore does not disclose, teach, or suggest "after a **configurable delay** interval has elapsed and if the message has not been removed from the non-persistent storage, saving the message to persistent storage so that the message can be retrieved and delivered."

To establish *prima facie* obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. See MPEP §2143.03. Chandrasekaran, Hamada and Kalkunte, individually or in combination, do not disclose, teach or suggest the above mentioned limitations of claim 1. The Examiner therefore has failed to establish a prima facie basis from which a proper determination of obviousness can be made for claim 1.

Additionally, there is no suggestion or motivation to combine Chandrasekaran and Kalkunte to use configurable time delays before saving a message from volatile to non-volatile memory. Kalkunte uses the time delay for a completely different purpose of restarting the servers in the cluster and has nothing to do with saving messages. Moreover, the Examiner's stated motivation for combining the Chandrasekaran and Kalkunte is a classic case of hindsight reconstruction. The Examiner's stated motivation for combining the references is what is enabled by the claim itself, i.e. setting, in other words configuring, the wait interval before saving the message to persistent storage. *See, e.g., page 5 of the Final Office Action dated February 3, 2009.*

In sum, the Examiner has failed to make a prima facie case of obviousness because the cited references, alone or in combination, do not disclose the limitations of claim 1. Independent claims 13, 16 and 24 recite similar language as claim 1 and the dependent claims include limitations of their base independent claims. The Examiner has failed to establish the prima facie case of obviousness for similar reasons as discussed above. Therefore, it is respectfully requested that the final rejections of claims 1, 3-31 be withdrawn.